

**B. B. Andersen Construction Co., Inc. and Charles
R. Mayberry. Case 17-CA-10196**

July 8, 1982

DECISION AND ORDER

**BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER**

On January 14, 1982, Administrative Law Judge Clifford H. Anderson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order,¹ as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, B. B. Andersen Construction Co., Inc., Arkansas, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Expunge from its files any reference to the discharge of Charles R. Mayberry on February 16, 1981, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT terminate employees because they protest our work assignments.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them in Section 7 of the Act.

WE WILL offer Charles R. Mayberry immediate and full reinstatement to his former position of employment or, if that position no longer exists, to a substantially equivalent position.

WE WILL make Charles R. Mayberry whole for any loss of pay he may have suffered because we unlawfully terminated his appointment together with appropriate interest.

WE WILL expunge from our files any references to the disciplinary discharge of Charles R. Mayberry on February 16, 1981, and WE WILL notify him that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

**B. B. ANDERSEN CONSTRUCTION CO.,
INC.**

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge: I heard this case in Topeka, Kansas, on October 29, 1981, pursuant to a complaint and notice of hearing issued on April 7, 1981, by the Regional Director for Region 17 of the National Labor Relations Board (the Regional Direc-

¹ In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

tor and the Board, respectively) based on a charge filed on February 23, 1981, by Charles R. Mayberry, an individual, against B. B. Andersen Construction Co., Inc. (Respondent).

The complaint alleges that Respondent terminated employee Mayberry because of Mayberry's protected concerted and union activity in violation of Section 8(a)(3) and (1) of the National Labor Relations Act. Respondent avers that it fired Mayberry due to insufficient work quantity and not for any reason prohibited by the Act.

All parties were given the opportunity to appear and participate at the hearing, to introduce relevant evidence; to call, examine, and cross-examine witnesses; to argue orally; and to file briefs. Upon the entire record¹ including the oral argument of Respondent and briefs from Respondent and the General Counsel and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT²

I. JURISDICTION

Respondent is a Kansas state corporation engaged in the construction industry as a general contractor at various jobsites in Kansas. In the course of its business operations, Respondent annually purchases goods and services valued in excess of \$50,000 directly from sources located outside the State of Kansas.

II. THE LABOR ORGANIZATION INVOLVED

Carpenters Local 201, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Carpenters), is now and at all times material has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background

Respondent has at relevant times had collective-bargaining contracts with the Carpenters and an unspecified local of the Laborers' International Union of North America (Laborers), with each Union representing employees in its particular craft. In January and February 1981,³ the period at issue herein, Respondent was engaged in a high school construction project in Arkansas, Kansas (the project).

William Lyden, Respondent's project superintendent, had some 25 years' experience as a construction supervisor and for some 30 years had been a member of Local 1445, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. He had been superintendent since the project's inception on September 1980. Under Lyden was Carpentry Foreman (also sometimes referred to as the general foreman) Christopher Reno, a 2-year member of the Carpenters, who oversaw the work of Respond-

ent's carpenter employees on the project. Charles Mayberry commenced work at the project as a carpenter on January 23 and worked until his discharge on February 16. Robert Hutson commenced work at the project as a carpenter on January 27, was appointed the Carpenters job steward on February 6, and left the job on February 20.

During the relevant period, Respondent experienced difficulty obtaining sufficient laborer employees through the Laborers' hiring hall and was forced to obtain such employees directly or "off the bank" as was allowed under the collective-bargaining agreement. This difficulty appears to have resulted from the distance of the project from the metropolitan area where the union hiring halls and the residences of the employees were located. Employees preferred to work closer to their homes and, apparently, closer work was available, thus making Respondent's hire and retention of qualified employees on the project more difficult. Respondent experienced the same difficulty with regard to carpenters. Inadequate numbers of carpenters were available through the Carpenters hiring hall, employee turnover was high, and, in Project Superintendent Lyden's view, carpenter employee qualifications and performance were a problem at the project.

Save for the dispute involved in the instant case, there was no evidence of institutional or ongoing conflict between the labor organizations representing Respondent's employees at the project and Respondent. Nor was there significant evidence of union animus directed at the Carpenters or Laborers by Respondent's agents. To the contrary there was evidence that Respondent's superintendent, Lyden, took a generally cooperative stance in dealings with the employees' representatives.

B. Events Surrounding the Discharge

The causes of Mayberry's discharge asserted by the General Counsel and Respondent may be separately discussed.

1. The General Counsel's version

The various construction crafts, including the Carpenters, have traditionally performed certain work which both the unions and their members regard as exclusively their own.⁴ Respondent's carpenters at the project had become concerned that noncarpenters were doing carpenters' work. On Friday, February 6, carpenter Robert Hutson, on his appointment as the Carpenters steward, spoke with Project Superintendent Lyden about carpenter employee unrest because of noncarpenters doing carpentry work on the project. Hutson recalled that Lyden said that he was not going to fire the men whose work was in dispute, adding that the men had a right to work and a right to make a living. Hutson agreed, but asked

¹ Counsel for the General Counsel's unopposed motion to correct typographical errors in the transcript is hereby granted.

² Substantial portions of the following facts were admitted in the pleadings, stipulated to by the parties, or testified to without challenge. Where not otherwise specified, these findings are based on such unchallenged evidence, stipulations, or admissions.

³ All dates hereinafter refer to 1981 unless otherwise specified.

⁴ The Carpenters collective-bargaining agreement with Respondent refers to jurisdictional disputes and provides for their resolution. The basic proposition that craft unions and their members guard that which they think is their work from perceived encroachment by other crafts is amply demonstrated in the legislative history of Sec. 8(b)(4)(D) and Sec. 10(k) of the Act and a myriad of Board cases. It is here judicially noted without further discussion.

Lyden to "ask them to limit their activities to something other than carpentry work."

Work ended early on Monday, February 9, due to a heavy snowfall and no work was attempted on February 10 or 11. On February 12, the carpenters drove to the project but were told that the weather still prevented work. While at the site, several carpenters, including Mayberry, spoke with steward Hutson concerning various matters including their continuing complaint that noncarpenters were engaging in carpenters' work on the project. Later that day, Hutson spoke to Reno about the employees' complaint, but was told by Reno to talk to Superintendent Lyden about the matter. No work was performed on Friday, February 13, or over the weekend.

On Monday, February 16, in the morning between 8 and 9, Hutson was approached by three carpenters including Mayberry, each of whom complained to him that laborer employee Sam Oakes was working with carpentry tools and doing carpenters' work. Hutson proceeded to the area where Oakes was working with several carpenters. He observed Oakes wearing a carpenter's belt and nailing plywood into forms. Hutson then went to Foreman Reno and complained to him that Oakes was wearing a carpenter's apron and was doing carpentry work when he should be working as a laborer. Reno responded that he would ask Lyden about the matter. Hutson asked to be informed of Lyden's ultimate decision and Reno left for the construction office.

Some 20 to 30 minutes later, Hutson observed Lyden and Reno leave the office and pass by him on the way to the working area of the project. Hutson hailed Lyden, who stopped to talk. Reno continued on. Hutson testified that he asked Lyden what he had decided about Sam Oakes. Lyden said that the man "has a right to work, to make a living." Hutson responded:

We agree with that completely. We're not asking you to fire him. We just feel that you would have a lot better spirit among the men if you would arrange for him to do a lot of the work that can be done, that needs to be done, without his being involved in actual carpentry work.

Lyden responded that he would go talk to Oakes. Lyden then left and Hutson returned to his work.⁵

Lyden went to the area where carpenters, including Mayberry and Richard Bordeaux, and laborer Sam Oakes were working. Lyden asked Bordeaux if Oakes was doing carpentry work. Bordeaux told Lyden that Oakes was not doing carpentry work but was helping him. Mayberry testified that he then interrupted and told Lyden that he thought Oakes should not be doing carpenters' work. Mayberry recalled that Lyden then asserted that Oakes had the right to carry the tools. Mayberry replied that Oakes could carry the tools but should not be doing carpentry work with them. The conversation then ended.⁶

⁵ The events to this point are not in dispute and are based on the uncontradicted credited testimony of the noted individuals. Lyden and Reno either did not address the specific conversations described or generally adopted the earlier testimony of Hutson and Mayberry.

⁶ I credit Mayberry as to these events. His demeanor was convincing and his recollection clear. Bordeaux essentially corroborated Mayberry's

Hutson testified that some 15 or 20 minutes after his conversation with Lyden he observed Lyden running across the construction site. Lyden then saw Hutson, and ran up to him, and the two had a conversation. Hutson testified that Lyden said, "I found my agitator and he'll be laid off tonight." Lyden then told Hutson, in Hutson's recollection, that Lyden had just met with the men and had asked about Oakes. Lyden then described that earlier conversation in a manner consistent with the testimony of Mayberry, *supra*. Lyden continued, in Hutson's testimony, saying that the things that were said in his meeting with Mayberry:

... made him [Lyden] so mad that he was afraid that he was going to explode and the reason that I had seen him running across the job was that was one way that helped to vent his anger.

Lyden did not have a clear recollection of his conversation with Hutson. He did not dispute Hutson's version of events, however, save for Hutson's assertion that he had been running immediately prior to the conversation.⁷

Lyden testified that his remarks to Hutson were intended to describe and refer to an unrelated situation concerning employee Terry Christianson, who had—in a drunken state—arrived at work and, at one point, refused to leave Lyden's office. Lyden thereafter refused to give Christianson further work. No evidence was introduced establishing further details regarding Lyden's encounters with and ultimate discontinuance of Christianson's employment.

Just before the normal end of the working day on February 16, Mayberry was directed to the office and was there terminated by Lyden.⁸ Lyden testified that at the time he fired Mayberry he had no knowledge of and did not believe that the carpenters' complaints about Oakes and other noncarpenters had come from or been caused by Mayberry.

There is no dispute that at relevant times Lyden regarded Oakes as possessing the skills of a carpenter and wished to employ him in that capacity. Lyden testified that he intended to utilize Oakes in a laborer's capacity until Oakes was issued a permit by the Carpenters which would allow him to work on the job as a carpenter. There is some confusion in the record regarding the exact timing of Oakes' and Lyden's contacts with the Carpenters, the Carpenters view of the Oakes' matter, and subsequent developments. It seems clear and I find however that, as of the time of the conversations be-

version of the conversation. Lyden's recollection was not complete. He did recall his remarks to Bordeaux and Bordeaux's response as noted, but could not recall Mayberry's part in the conversation. Further, as noted *infra*, Lyden's later remarks to Hutson substantiate my finding concerning Mayberry's comments here.

⁷ I credit the testimony of Hutson as to these events as his memory was sharp and firm and he demonstrated an unusually sound and convincing demeanor. Lyden's version is not inconsistent with Hutson's so much as it is partial and somewhat vague. I discredit it where inconsistent with Hutson's. With respect to Lyden's pace across the project prior to the conversation, it is unnecessary to find the opposing characterizations inconsistent. Lyden was moving in apparent haste from Hutson's perspective, even if that haste does not rise to the level of running. Clearly, Lyden was heated and I so find.

⁸ These events are discussed in greater detail, *infra*.

tween Hutson and Lyden on February 16, Oakes had not as yet obtained a Carpenters permit and Lyden knew this. Reno, Lyden, and others testified that Oakes had been told by Reno, at the start of the February 16 workday, to work as a laborer in assisting carpenters at the project at Lyden's instruction.

2. Respondent's version

Charles Mayberry's immediate supervisor was Christopher Reno. Reno testified that he observed Mayberry to be a good average carpenter during his first week of employment, i.e., Monday, January 27, thru Friday, January 31,⁹ but that after that time Mayberry's quantity of work—as opposed to quality—dropped off. Reno attributed this reduction to Mayberry's developing propensity to walk about the project or stand about observing events rather than attending to his production duties.

Mayberry and Reno each testified to a brief conversation occurring after a particular portion of an auditorium structure at the project had been completed. Their versions agree that Mayberry complimented himself on the quality of his own workmanship and that Reno answered that no one disputed the quality of Mayberry's work. Reno testified, however, that he also told Mayberry that there was a problem with Mayberry's quantity of work and that he should step up production. Mayberry did not recall Reno's additional remark concerning his work quantity.

Reno testified that some 3 days prior to Mayberry's discharge he spoke to Lyden about Mayberry and other employees, saying that they were not putting forth an honest effort. Reno also mentioned that he had observed Mayberry standing around on the job. Reno recalled that Lyden responded that he would check out the situation himself. Lyden similarly recalled Reno's report on the employees, placing the conversation as occurring 3 to 4 days before Mayberry's discharge in his direct examination and as 2 to 3 days under cross-examination. Lyden testified that following Reno's complaint he observed Mayberry at work and noticed on two or three occasions that Mayberry would stand upright without productive effort for 15 to 20 minutes at a time. He further testified that based on Reno's complaints and his own observations he determined to terminate Mayberry.

Mayberry testified that late on February 16 he was directed to the superintendent's trailer by Reno and there had a conversation with Lyden. Lyden handed him his paycheck and told him he was terminated. Mayberry asked for the reason for his firing and Lyden responded it was Respondent's termination policy number one¹⁰ and directed Mayberry to the rules posted on the office door. Mayberry read the rule and answered that he was probably one of the more knowledgeable carpenters on the job. Lyden said he did not doubt that but that he had to get a carpenter who would do the job for him. Mayberry said that he was not aware that he had not done the job. Lyden said that he could only take the word of his general foreman and that he had been told that May-

berry did nothing but walk around all day. More colloquy ensued, but Lyden in conclusion reasserted his position saying that he had to take the word of his foreman. Mayberry left the office. Mayberry testified that he returned to the office a few minutes later and told Lyden that he felt he had not been fairly treated and that he intended to file a grievance. Lyden testified that he told Mayberry he was fired pursuant to termination rule 1. He did not differ with Mayberry's version of the conversation save with respect to Mayberry's remark upon his return to the trailer after being discharged. Lyden recalled that Mayberry told him that he had not seen the last of Mayberry.

C. Analysis and Conclusions

1. Legal sufficiency of the theories of the parties

The legal principles asserted by the parties in support of their respective positions are neither novel nor substantially disputed. Clearly, if an employer terminates an employee for perceived inadequacies in his production the discharge is not improper. So, too, it is clear that if an employee is discharged for asserting, in good faith, contractual job assignment or work jurisdiction claims, irrespective of the merit of those claims or assertions, the Act is violated, for such conduct is union and protected concerted activity. *Clayton Construction Corporation*, 250 NLRB 798 (1980), *enfd.* 652 F.2d 6 (8th Cir. 1981); *Interboro Contractors, Inc.*, 157 NLRB 1295 (1966), *enfd.* 388 F.2d 495 (2d Cir. 1967); *Merlyn Bunney and Clarence Bunney, Partners, d/b/a Bunney Bros. Construction Company*, 139 NLRB 1516 (1962). Thus, it is not law but fact which turns this case.

2. Resolution of conflicting versions of fact

In my view the issue in this case is whether the evidence is sufficient to meet the General Counsel's burden of proof to show that Lyden fired Mayberry because Mayberry was revealed as the suspected cause or source of discontent among carpenter employees. For the reasons set forth *infra*, I find that Respondent, through Lyden, fired Mayberry because of his assertions that unauthorized individuals were doing carpenters' work. I further find that Respondent's asserted reason for Mayberry's discharge, i.e., his lack of sufficient quantity of work, was but a pretext seized on by Lyden to cloak his illegal motive for the discharge.

There was no dispute that there was discontent among the carpenters regarding the work done by Oakes and others and that this unhappiness had been conveyed to Respondent. Indeed, as to Oakes, Respondent had been acting on the problem. It is also clear that Lyden and Reno were particularly aware of the jurisdictional dispute on February 12 and 16. The successive meetings of Lyden, first with Reno, then with Hutson, then the carpenters, and finally with Hutson again, make it clear: (1) that Lyden learned that it was Mayberry, rather than other carpenters like Bordeaux, who held the view that Oakes should not be performing as he had been the morning of February 16; (2) that Lyden was upset by this knowledge; and (3) that he intended to fire the "agi-

⁹ Mayberry was hired on Friday, January 23, but the record does not indicate if he actually worked that day.

¹⁰ Respondent's termination rule 1 in essence asserts that inadequate quality or quantity of work is grounds for termination.

tator" forthwith. I reject Lyden's assertion that he had no knowledge of Mayberry's views regarding Oakes' work at the time he fired Mayberry. The credited testimony of Hutson, Mayberry, and Bordeaux establishes what took place on February 16. These events admit of no other interpretation. Lyden's attempt to avoid the fair meaning of his remarks to Hutson announcing his intention to fire the "agitator" is rejected. His suggestion that he in fact was referring to a different employee, who had been drunken and belligerent, is wildly improbable. Lyden's demeanor during his testimony with respect to this assertion was particularly weak. He seemed subdued and even guilty in making his assertions regarding this incident.

In making this determination I have considered the evidence that neither Lyden nor Respondent, on this record, had a history of opposition to trade unionism or to the Carpenters in particular. I do not believe that Lyden's hostility to Mayberry because Lyden believed Mayberry was responsible for fomenting unrest concerning carpenter work assignments is inconsistent with an otherwise benign attitude toward employee union representation or his own longstanding membership in a union. Clearly, Lyden wanted Oakes to perform as a carpenter and had been working to achieve that goal. His pique at Mayberry because he believed he was raising the matter and causing the steward to complain when other carpenters like Bordeaux were willing to be more flexible as to Oakes is not implausible and, on this record, is conclusively demonstrated.

I reject Respondent's defense that it fired Mayberry due to inadequate work in part because it is inconsistent with the admission by Lyden to Hutson that Mayberry was to be fired because of his agitation. Further, however, I also reject it based on the inherent improbability of Lyden's version of events and his unpersuasive demeanor during his testimony. There was credible testimony that Reno had an adverse opinion of Mayberry's work quantity and expressed this opinion to Lyden about 3 days before Mayberry's discharge. Lyden's statement to Mayberry when he fired him, that Reno thought little of him and that Lyden felt it appropriate to back up his foreman, substantiates the assertion that Reno had complained to Lyden. Yet it is also clear that Lyden as a general practice and in particular with respect to Mayberry, told Reno that he would make his own decision on Mayberry after making his own independent investigation. Thus, it is clear and I find that Lyden would not have fired Mayberry based on Reno's recommendation without independently observing Mayberry's work. This I find Lyden did not do until after he determined to fire Mayberry because of his protected activity, if at all.

Lyden had virtually no opportunity to observe Mayberry's work between the time Reno complained to Lyden and the time of Lyden's conversation with Mayberry, Bordeaux, and the others on February 16. There was no carpentry work done at the project between February 6 and February 16. Nor did Lyden indicate to anyone that he had personally observed Mayberry's work until after the discharge. Lyden did not tell Mayberry on February 16 that he was firing him based on his personal observation that Mayberry's work was insuffi-

cient. Lyden said only that his foreman held that view and that he must back up his foreman. This omission is evidence that, in fact, he had not observed Mayberry's work. Lyden did not tell Hutson in their last conversation that he was going to fire Mayberry for any reason other than his "agitator" status. Thus, I am convinced that Lyden did not observe Mayberry, if he did at all, until after he had announced to Hutson his determination to fire Mayberry for being an agitator. Any observations by Lyden after such an announcement must be heavily discounted as *post hoc* attempts to justify a decision he had already made and to cloak the true illegal motive with a seemingly legitimate rationale.¹¹ Thus, I find Mayberry's productivity was not a factor in Respondent's decision to fire him.

3. Summary and conclusion

I have found Mayberry was fired by Respondent not due to inadequate productivity but rather because he complained of noncarpenter employees including Oakes doing carpentry work at the project. I have further found that such activity was union and protected concerted activity. Accordingly, I find that Respondent in firing Mayberry violated Section 8(a)(3) and (1) of the Act.

IV. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found Respondent has terminated the employment of Charles R. Mayberry in violation of Section 8(a)(1) and (3) of the Act, I shall order Respondent to offer him immediate and full reinstatement to his former position of employment, or, if said position is no longer available, to a substantially equivalent position, without prejudice to any seniority or other rights and privileges to which he may have been entitled. I shall also order that Respondent make Charles R. Mayberry whole for any loss of earnings he may have suffered by reason of the discrimination against him. Said losses are to be computed in the manner described in *F. W. Woolworth Company*, 90 NLRB 289 (1950), together with interest thereon in accordance with the policy of the Board set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977); see also *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, and the entire record herein, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Carpenters is a labor organization within the meaning of Section 2(5) of the Act.

¹¹ It is also unlikely, given the shortage of skilled carpenters on the payroll and their continuing unavailability through the hiring hall, that an admittedly able carpenter like Mayberry would have been fired without a warning from Lyden, even had Lyden in fact determined that Mayberry was "standing around."

3. By discharging employee Charles R. Mayberry because he, in good faith, protested Respondent's assignment of work to certain employees, Respondent terminated an employee because of his protected concerted and union activities, thereby violating Section 8(a)(1) and (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER¹²

The Respondent, B. B. Andersen Construction Co., Inc., Arkansas, Kansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees because they protest Respondent's work assignments.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act:

(a) Post at its Arkansas, Kansas, high school project, or, if such project no longer exists, its other jobsite or

jobsites where employees represented by the Carpenters are employed, the attached notice marked "Appendix."¹³ Copies of said notice on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Offer Charles R. Mayberry immediate and full reinstatement to his former position of employment, or, if that position no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of wages he may have suffered by reason of the discrimination against him, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."